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September 19, 2014

**VIA ELECTRONIC FILING  
AND HAND DELIVERY**

Honorable Pamela K. Chen  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Gorfinkel v. Genometrica - Case No. 13-cv-3093 (PKC)(AKT)

Honorable Judge Chen:

We represent the remaining Defendant, Genometrica Research Inc., in the above-referenced action. We write to request an extension of time to file Genometrica's reply in further support of its currently pending motion to reargue. The reply papers are now due on September 22, 2014. Genometrica requests an extension up to and including October 9, 2014. The reason for the request is the upcoming holidays.

We have asked Plaintiff's counsel whether Plaintiff consents to this request via Email. Plaintiff's counsel has said that they would consent if Genometrica agrees to certain unrelated discovery requests. A copy of the Email string between counsel is enclosed for the Court's review. As the Court is likely aware, Magistrate Thomlinson has appointed a Special Master to handle discovery disputes in this matter -- with both sides claiming discovery deficiencies. We do not intend to bother the Court with those issues as we believe that the Special Master is quite capable of handling the disputes that are within his mandate. Because Plaintiff has declined to extend the courtesy extension without other concessions, we write to the Court to request the extension.

Very truly yours,

A handwritten signature in black ink, appearing to read "RJK".

Robert J. Kenney, Jr.

Enclosure

cc (via ECF): Nicole Hyland  
Anna Kadyshevich  
James Kennedy

The Chrysler Building 405 Lexington Avenue New York, NY 10174-0208  
www.BlankRome.com

**Kenney Jr., Robert J.**

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**From:** Hyland, Nicole [nhyland@fkks.com]  
**Sent:** Thursday, September 18, 2014 5:19 PM  
**To:** Kenney Jr., Robert J.; Arfield, Joshua; 'PBTufariello@intellectulaw.com'  
**Cc:** 'jkennedy@kennedyberg.com'; Kadyshevich, Anna; Jacobs, Andrew; Anderson, Thea; Sims, Rachel  
**Subject:** RE: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Rob,

It is a routine practice to consent to extensions with certain conditions, such as when a plaintiff agrees to extend the time to answer a pleading on the condition that the defendant waives service objections. The Special Master has instructed the parties to confer about the deposition schedule and I have emailed you several times over the past few days to ask if you are ready to exchange witness lists – you have not responded. I have stated repeatedly that we will agree to your extension subject to entirely reasonable conditions that are aimed at moving discovery forward.

As to your point about the discovery deficiencies, you ignore the statement in my email at 3:31 pm (below) acknowledging that *both* parties have claims of discovery deficiencies that need to be resolved, and that we are continuing to work on that.

If you insist on going to the Court, do not misrepresent our position. I provided you the language, below, to use in conveying our position to the Court and I insist that you quote it accurately.

Nicole

**Nicole Hyland** | Frankfurt Kurnit Klein & Selz PC  
488 Madison Avenue | New York, New York 10022  
t: 212.826.5552 | f: 347.438.2140 | [nhyland@fkks.com](mailto:nhyland@fkks.com)

**From:** Kenney Jr., Robert J. [mailto:[rkenney@BlankRome.com](mailto:rkenney@BlankRome.com)]  
**Sent:** Thursday, September 18, 2014 5:05 PM  
**To:** Hyland, Nicole; Arfield, Joshua; 'PBTufariello@intellectulaw.com'  
**Cc:** 'jkennedy@kennedyberg.com'; Kadyshevich, Anna; Jacobs, Andrew; Anderson, Thea; Sims, Rachel  
**Subject:** RE: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Nicole, our courtesies have come with no strings attached. Either you consent or your do not. From your Email below, it appears that you do not (unless). If I am reading it wrong, please let me know.

Moreover, I am sure you understand -- because we have mentioned this issue on multiple occasions -- that your clients have failed to produce almost all of the documents that we have requested. So you are not exactly on firm ground to make the statements that you make below. Moreover, the Special Master ordered that defendants look at the computers and machines by a certain date which is well in the past -- and that was intended to complete our obligations with respect to those computers and machines. It was a courtesy that we extended to you -- without strings -- that we would still allow you to look at the machines and produce any documents that we could when we were in a position to do so. We are asking for the same courtesy -- an a common one at that. If you do not want to consent, or insist on attaching strings, we will simply ask for the extension from the Court.

We have time to work this out. So we can reconvene tomorrow if you wish. But it seems unlikely that the Court would deny the request. Rob

**Robert J. Kenney Jr. | Blank Rome LLP**

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**From:** Hyland, Nicole [mailto:[nhyland@fkks.com](mailto:nhyland@fkks.com)]

**Sent:** Thursday, September 18, 2014 4:55 PM

**To:** Kenney Jr., Robert J.; Arfield, Joshua; 'PBTufariello@intellectulaw.com'

**Cc:** 'jkennedy@kennedyberg.com'; Kadyshevich, Anna; Jacobs, Andrew; Anderson, Thea; Sims, Rachel

**Subject:** RE: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Rob – as you know, we have granted extensions as well, including agreeing to Betty's request to extend the reply date on Genometrica's motion for a protective order. We did this with the express understanding that there would be reciprocation when requested. Apparently, those were hollow assurances, if you are not "in favor" of negotiating the dates that we are now requesting. Since you need an extension and we are willing to grant one, I urge you to accept our entirely reasonable suggestion regarding the setting of deposition dates and production of the computer records. If you would prefer to ask the Court for an extension, please include the following statement on behalf of our client: "Plaintiff has expressed her willingness to agree to the extension, as long as Genometrica agrees to move forward on discovery, by exchanging deposition witness lists, scheduling deposition dates, and producing the documents that are in readable form located on the hard drives in Blank Rome's possession within the next week – specific dates to be agreed upon by the parties."

**Nicole Hyland** | Frankfurt Kurnit Klein & Selz PC  
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**From:** Kenney Jr., Robert J. [mailto:[rkenney@BlankRome.com](mailto:rkenney@BlankRome.com)]

**Sent:** Thursday, September 18, 2014 3:36 PM

**To:** Hyland, Nicole; Arfield, Joshua; 'PBTufariello@intellectulaw.com'

**Cc:** 'jkennedy@kennedyberg.com'; Kadyshevich, Anna; Jacobs, Andrew; Anderson, Thea; Sims, Rachel

**Subject:** RE: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Nicole, Thank you for your response. As you know, we extended your side courtesy extensions for 30 days. We are not in favor of negotiation motion dates based on other portions of the litigation. We are more than happy to work out these other details with you in an expeditious manner. However, we intend to do them separately as is appropriate. When I request the extension from the Court, I am required to say whether we have discussed the request with you, and whether you consent to it. Please let me know whether you agree to the extension so I know what to tell the Court. Thanks, Rob

**Robert J. Kenney Jr. | Blank Rome LLP**

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Phone: 212.885.5251 | Fax: 917.332.3796 | Email: [RKenney@BlankRome.com](mailto:RKenney@BlankRome.com)

**From:** Hyland, Nicole [mailto:[nhyland@fkks.com](mailto:nhyland@fkks.com)]

**Sent:** Thursday, September 18, 2014 3:31 PM

**To:** Kenney Jr., Robert J.; Arfield, Joshua; 'PBTufariello@intellectulaw.com'

**Cc:** 'jkennedy@kennedyberg.com'; Kadyshevich, Anna; Jacobs, Andrew; Anderson, Thea

**Subject:** RE: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Rob

Although we wish to continue extending professional courtesies, we are concerned about getting everything done within the existing discovery timeframes. Therefore, as a preliminary matter, we need to know when Genometrica will be ready to exchange deposition witness lists and discuss scheduling. We have asked several times and have not received a response. Can you commit to exchanging deposition witness lists today and having a call tomorrow to set dates?

Additionally, when we spoke to you and Hannah several weeks ago about the three computers you obtained from an employee of Genometrica, Hannah stated that she was working with experts to process the raw data. However, she also said she had already identified some documents in readable form (such as word and pdf documents) that could be produced without any processing. Since then, we have not heard anything further on the subject, although we recognize that everyone has been busy with the various briefing schedules. We ask that you produce any documents from those computers that are in readable form by early next week. Also, please provide us with an update on the processing of the raw data. We are happy to set up a call with Hannah to discuss where things are.

We will agree to your extension, but in exchange we need a commitment from you to move forward on these matters under the timeframes set forth above.

Obviously, we understand that both sides have separate issues concerning discovery deficiencies that need to be resolved. We are reviewing those issue and will follow up with you – hopefully next week.

Nicole

**Nicole Hyland** | Frankfurt Kurnit Klein & Selz PC  
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**From:** Kenney Jr., Robert J. [<mailto:rkenney@BlankRome.com>]  
**Sent:** Thursday, September 18, 2014 1:37 PM  
**To:** Kenney Jr., Robert J.; Hyland, Nicole; Arfield, Joshua; 'PBTufariello@intellectulaw.com'  
**Cc:** 'jkennedy@kennedyberg.com'; Kadyshevich, Anna; Jacobs, Andrew; Anderson, Thea  
**Subject:** RE: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Nicole, I am following up on the below request. Are you ok with 10/9? Thanks, Rob

**Robert J. Kenney Jr. | Blank Rome LLP**  
The Chrysler Building 405 Lexington Avenue | New York, NY 10174-0208  
Phone: 212.885.5251 | Fax: 917.332.3796 | Email: [RKenney@BlankRome.com](mailto:RKenney@BlankRome.com)

**From:** Kenney Jr., Robert J.  
**Sent:** Thursday, September 18, 2014 11:04 AM  
**To:** 'nhyland@fkks.com'; 'JArfield@fkks.com'; 'PBTufariello@intellectulaw.com'  
**Cc:** 'jkennedy@kennedyberg.com'; 'AKadyshevich@fkks.com'; 'AJacobs@fkks.com'; 'TAnderson@fkks.com'  
**Subject:** Re: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

How about 10/9?

**From:** Hyland, Nicole [<mailto:nhyland@fkks.com>]  
**Sent:** Thursday, September 18, 2014 10:45 AM  
**To:** Kenney Jr., Robert J.; Arfield, Joshua <[JArfield@fkks.com](mailto:JArfield@fkks.com)>; 'Betty Tufariello' <[PBTufariello@intellectulaw.com](mailto:PBTufariello@intellectulaw.com)>  
**Cc:** 'jkennedy@kennedyberg.com' <[jkennedy@kennedyberg.com](mailto:jkennedy@kennedyberg.com)>; Kadyshevich, Anna <[AKadyshevich@fkks.com](mailto:AKadyshevich@fkks.com)>; Jacobs, Andrew <[AJacobs@fkks.com](mailto:AJacobs@fkks.com)>; Anderson, Thea <[TAnderson@fkks.com](mailto:TAnderson@fkks.com)>  
**Subject:** RE: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

What date are you requesting as a deadline?

**Nicole Hyland** | Frankfurt Kurnit Klein & Selz PC  
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t: 212.826.5552 | f: 347.438.2140 | [nhyland@fkks.com](mailto:nhyland@fkks.com)

**From:** Kenney Jr., Robert J. [<mailto:rkenney@BlankRome.com>]  
**Sent:** Thursday, September 18, 2014 10:40 AM  
**To:** Arfield, Joshua; '[betty@intellectualaw.com](mailto:betty@intellectualaw.com)'  
**Cc:** '[jkennedy@kennedyberg.com](mailto:jkennedy@kennedyberg.com)'; Hyland, Nicole; Kadyshevich, Anna; Jacobs, Andrew; Anderson, Thea  
**Subject:** Re: On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Nicole, Given the upcoming holidays, we would like a two week extension to file our reply papers on the motion to reargue. Do you consent to that extension? Thanks, Rob

**From:** Arfield, Joshua [<mailto:jArfield@fkks.com>]  
**Sent:** Wednesday, September 17, 2014 08:37 PM  
**To:** '[betty@intellectualaw.com](mailto:betty@intellectualaw.com)' <[betty@intellectualaw.com](mailto:betty@intellectualaw.com)>; Kenney Jr., Robert J.  
**Cc:** '[pibernstein@ssmp.com](mailto:pibernstein@ssmp.com)' <[pibernstein@ssmp.com](mailto:pibernstein@ssmp.com)>; '[swallach@ssmp.com](mailto:swallach@ssmp.com)' <[swallach@ssmp.com](mailto:swallach@ssmp.com)>; '[jkennedy@kennedyberg.com](mailto:jkennedy@kennedyberg.com)' <[jkennedy@kennedyberg.com](mailto:jkennedy@kennedyberg.com)>; Hyland, Nicole <[nhyland@fkks.com](mailto:nhyland@fkks.com)>; Kadyshevich, Anna <[AKadyshevich@fkks.com](mailto:AKadyshevich@fkks.com)>; Jacobs, Andrew <[AJacobs@fkks.com](mailto:AJacobs@fkks.com)>; Anderson, Thea <[TAnderson@fkks.com](mailto:TAnderson@fkks.com)>  
**Subject:** On behalf of Nicole Hyland / re. Gorfinkel v. Vayntrub, et al.

Dear Ms. Tufariello and Mr. Kenney:

Please see the attached documents sent on behalf of Nicole Hyland.

If you have any comments or questions, please contact Ms. Hyland directly:

**Nicole Hyland** | Frankfurt Kurnit Klein & Selz PC  
488 Madison Avenue | New York, New York 10022  
t: 212.826.5552 | f: 347.438.2140 | [nhyland@fkks.com](mailto:nhyland@fkks.com)

Best regards,

Joshua Arfield

**Joshua Arfield** | Assistant  
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